

LEGISLATURE OF THE STATE OF IDAHO  
Sixty-first Legislature First Regular Session - 2011

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 6

BY REVENUE AND TAXATION COMMITTEE

AN ACT

RELATING TO THE CIRCUIT BREAKER PROPERTY TAX RELIEF PROGRAM; AMENDING SECTION 63-701, IDAHO CODE, TO REVISE THE DEFINITION OF INCOME; DECLARING AN EMERGENCY AND PROVIDING RETROACTIVE APPLICATION.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 63-701, Idaho Code, be, and the same is hereby amended to read as follows:

63-701. DEFINITIONS. As used in this chapter:

(1) "Claimant" means a person who has filed an application under section 63-602G, Idaho Code, and has filed a claim under the provisions of sections 63-701 through 63-710, Idaho Code. Except as provided in section 63-702(2), Idaho Code, on January 1, or before April 15, of the year in which the claimant first filed a claim on the homestead in question, a claimant must be an owner of the homestead and on January 1 of said year a claimant must be:

(a) Not less than sixty-five (65) years old; or

(b) A child under the age of eighteen (18) years who is fatherless or motherless or who has been abandoned by any surviving parent or parents; or

(c) A widow or widower; or

(d) A disabled person who is recognized as disabled by the social security administration pursuant to title 42 of the United States Code, or by the railroad retirement board pursuant to title 45 of the United States Code, or by the office of management and budget pursuant to title 5 of the United States Code; or

(e) A disabled veteran of any war engaged in by the United States, whose disability is recognized as a service-connected disability of a degree of ten percent (10%) or more, or who has a pension for nonservice-connected disabilities, in accordance with laws and regulations administered by the United States department of veterans affairs; or

(f) A person, as specified in 42 U.S.C. 1701, who was or is entitled to receive benefits because he is known to have been taken by a hostile force as a prisoner, hostage or otherwise; or

(g) Blind.

(2) "Homestead" means the dwelling, owner-occupied by the claimant as described in this chapter and used as the primary dwelling place of the claimant and may be occupied by any members of the household as their home, and so much of the land surrounding it, not exceeding one (1) acre, as is reasonably necessary for the use of the dwelling as a home. It may consist of a part of a multidwelling or multipurpose building and part of the land upon which it is built. "Homestead" does not include personal property such

1 as furniture, furnishings or appliances, but a manufactured home may be a  
2 homestead.

3 (3) "Household" means the claimant and the claimant's spouse. The term  
4 does not include bona fide lessees, tenants, or roomers and boarders on con-  
5 tract. "Household" includes persons described in subsection (8) (b) of this  
6 section.

7 (4) "Household income" means all income received by the claimant and,  
8 if married, all income received by the claimant's spouse, in a calendar year.

9 (5) "Income" means the sum of federal adjusted gross income as defined  
10 in the Internal Revenue Code, as defined in section 63-3004, Idaho Code, and  
11 to the extent not already included in federal adjusted gross income:

12 (a) Alimony;

13 (b) Support money;

14 (c) Nontaxable strike benefits;

15 (d) The nontaxable amount of any individual retirement account, pen-  
16 sion or annuity, (including railroad retirement benefits, all payments  
17 received under the federal social security act except the social secu-  
18 rity death benefit as specified in this subsection, state unemployment  
19 insurance laws, and veterans disability pensions and compensation, ex-  
20 cluding any return of principal paid by the recipient of an annuity and  
21 excluding rollovers as provided in section 402 or 403 of the Internal  
22 Revenue Code);

23 (e) Nontaxable interest received from the federal government or any of  
24 its instrumentalities or a state government or any of its instrumentali-  
25 ties;

26 (f) Worker's compensation; and

27 (g) The gross amount of loss of earnings insurance.

28 It does not include gifts from nongovernmental sources or inheritances. To  
29 the extent not reimbursed, the cost of medical care as defined in section  
30 213(d) of the Internal Revenue Code, incurred or paid by the claimant and,  
31 if married, the claimant's spouse, may be deducted from income. To the ex-  
32 tent not reimbursed, personal funeral expenses, including prepaid funeral  
33 expenses and premiums on funeral insurance, of the claimant and claimant's  
34 spouse only, may be deducted from income up to an annual maximum of five  
35 thousand dollars (\$5,000) per claim. "Income" does not include veterans  
36 disability pensions received by a person described in subsection (1) (e) who  
37 is a claimant or a claimant's spouse if the disability pension is received  
38 pursuant to a service-connected disability of a degree of forty percent  
39 (40%) or more. "Income" does not include dependency and indemnity compensa-  
40 tion or death benefits paid to a person described in subsection (1) of this  
41 section by the United States department of veterans affairs and arising from  
42 a service-connected death or disability. "Income" does not include lump sum  
43 death benefits made by the social security administration pursuant to 42  
44 U.S.C. section 402(i). Documentation of medical expenses may be required by  
45 the county assessor, board of equalization and state tax commission in such  
46 form as the county assessor, board of equalization or state tax commission  
47 shall determine. "Income" shall be that received in the calendar year imme-  
48 diately preceding the year in which a claim is filed. Where a claimant and/or  
49 the claimant's spouse does not file a federal tax return, the claimant's  
50 and/or the claimant's spouse's federal adjusted gross income, for purposes

of this section, shall be an income equivalent to federal adjusted gross income had the claimant and/or the claimant's spouse filed a federal tax return, as determined by the county assessor. The county assessor, board of equalization or state tax commission may require documentation of income in such form as each shall determine, including, but not limited to: copies of federal or state tax returns and any attachments thereto; and income reporting forms such as the W-2 and 1099.

For determining income for certain married individuals living apart, the provisions of sections 2(c) and 7703-~~(b)~~ of the Internal Revenue Code shall apply.

(6) "Occupied" means actual use and possession.

(7) "Owner" means a person holding title in fee simple or holding a certificate of motor vehicle title (either of which may be subject to mortgage, deed of trust or other lien) or who has retained or been granted a life estate or who is a person entitled to file a claim under section 63-702, Idaho Code. "Owner" shall also include any person who:

(a) Is the beneficiary of a revocable or irrevocable trust which is the owner of such homestead and under which the claimant or the claimant's spouse has the primary right of occupancy of the homestead; or

(b) Is a partner of a limited partnership, member of a limited liability company or shareholder of a corporation if such entity holds title in fee simple or holds a certificate of motor vehicle title and if the person holds at least a five percent (5%) ownership in such entity, as determined by the county assessor; or

(c) Has retained or been granted a life estate.

"Owner" includes a vendee in possession under a land sale contract. Any partial ownership shall be considered as ownership for determining initial qualification for property tax reduction benefits; however, the amount of property tax reduction under section 63-704, Idaho Code, and rules promulgated pursuant to section 63-705, Idaho Code, shall be computed on the value of the claimant's partial ownership. "Partial ownership," for the purposes of this section, means any one (1) person's ownership when property is owned by more than one (1) person or where the homestead is held by an entity, as set forth in this subsection, but more than one (1) person has the right of occupancy of such homestead. A person holding either partial title in fee simple or holding a certificate of motor vehicle title together with another person but who does not occupy the dwelling as his primary dwelling place, shall not be considered an owner for purposes of this section, if such person is a cosignatory of a note secured by the dwelling in question and at least one (1) of the other cosignatories of the note occupies the dwelling as his primary dwelling place. The combined community property interests of both spouses shall not be considered partial ownership so long as the combined community property interests constitute the entire ownership of the homestead, including where the spouses are occupying a homestead owned by an entity, as set forth in this subsection, and the spouses have the primary right of occupancy of the homestead. The proportional reduction required under this subsection shall not apply to community property interests. Where title to property was held by a person who has died without timely filing a claim for property tax reduction, the estate of the deceased person shall be the "owner," provided that the time periods during which the deceased person

1 held such title shall be attributed to the estate for the computation of any  
2 time periods under subsection (8) (a) or (8) (b) of this section.

3 (8) (a) "Primary dwelling place" means the claimant's dwelling place  
4 on January 1 or before April 15 of the year for which the claim is made.  
5 The primary dwelling place is the single place where a claimant has  
6 his true, fixed and permanent home and principal establishment, and to  
7 which whenever the individual is absent he has the intention of return-  
8 ing. A claimant must establish the dwelling to which the claim relates  
9 to be his primary dwelling place by clear and convincing evidence or by  
10 establishing that the dwelling is where the claimant resided on January  
11 1 or before April 15 and:

12 (i) At least six (6) months during the prior year; or

13 (ii) The majority of the time the claimant owned the dwelling if  
14 owned by the claimant less than one (1) year; or

15 (iii) The majority of the time after the claimant first occupied  
16 the dwelling if occupied by the claimant for less than one (1)  
17 year. The county assessor may require written or other proof of  
18 the foregoing in such form as the county assessor may determine.

19 (b) Notwithstanding the provisions of paragraph (a) of this subsec-  
20 tion, the property upon which the claimant makes application shall be  
21 deemed to be the claimant's primary dwelling place if the claimant is  
22 otherwise qualified and resides in a care facility and does not allow  
23 the property upon which the claimant has made application to be occu-  
24 pied by persons paying a consideration to occupy the dwelling. Payment  
25 of utilities shall not be payment of a consideration to occupy the  
26 dwelling. A claimant's spouse who resides in a care facility shall be  
27 deemed to reside at the claimant's primary dwelling place and to be a  
28 part of the claimant's household. A care facility is a hospital, nurs-  
29 ing facility or intermediate care facility for people with intellectual  
30 disabilities as defined in section 39-1301, Idaho Code, or a facility  
31 as defined in section 39-3302(14), Idaho Code, or a dwelling other than  
32 the one upon which the applicant makes application where a claimant who  
33 is unable to reside in the dwelling upon which the application is made  
34 lives and receives help in daily living, protection and security.

35 SECTION 2. An emergency existing therefor, which emergency is hereby  
36 declared to exist, this act shall be in full force and effect on and after its  
37 passage and approval, and retroactively to January 1, 2011.